

## STATE OF VERMONT

In re ) Fair Hearing No. B-09/09-502  
 )  
 Appeal of )

# INTRODUCTION

The petitioner filed a fair hearing request on September 16, 2009 regarding a decision by the Department for Children and Families, Child Development Division (CDD) denying her an extension for a child care subsidy based on the service need of seeking employment. Subsequent to petitioner's request for fair hearing, the Department granted petitioner a variance and granted her child care subsidy based on seeking employment for the period of September 27, 2009 through October 31, 2009.

The Department indicated they believed the case was moot. A briefing deadline was set. The Department filed a Motion to Dismiss the Fair Hearing as moot. Petitioner did not respond to the Department's motion. The facts are not in dispute.

## DISCUSSION

The Legislature set out the purposes of the child care subsidy program in 33 V.S.A. § 3512 as follows:

(a) A child care services program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment . . .

(b) The subsidy authorized by this section shall be on a sliding scale basis. The scale shall be established by the commissioner, by rule, and shall bear a reasonable relationship to income and family size. The lower limit of the fee scale shall include families whose gross income is up to and including 100 percent of the federal poverty guidelines. The upper limit of the fee scale shall be neither less than 82.5 percent nor more than 100 percent of the state median income, adjusted for the size of the family. The scale shall be structured so that it encourages employment.

The commissioner has promulgated regulations entitled Child Care Financial Assistance Program Regulations (CCFA).

Pursuant to CCFA II.B.1 each caregiver in the child's home must have a service need. In petitioner's case her service need was based on seeking employment<sup>1</sup> or job search. She received a subsidy for the period of August 2, 2009 through August 29, 2009. When that subsidy ended, she sought an extension through a variance.

The Department denied petitioner's variance request due to a lack of verification. Petitioner requested a fair hearing on or about September 16, 2009.

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<sup>1</sup> The regulation governing seeking employment as a service need is found at CCFA Regulation II.B.1.d. The regulation limits child care assistance to a period of one month unless extended by the Commissioner. The Commissioner extended the period for petitioner. This service need is limited to one time in a twelve-month period.

The Department received verification regarding petitioner's job search and granted a variance for four weeks. On petitioner's request, the variance was granted for the period ending October 31, 2009.

The Department argues that the Board does not have jurisdiction because the case is moot. In Fair Hearing No. 17,272 on page 5, the Board adopted the holding in In Re S.H., 141 Vt. 278, 280 (1982) finding that a case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."

Petitioner requested an extension of child care assistance based on the seeking employment service need. Her request was granted obviating the need for a fair hearing. There is no longer a case for the Board to decide.

If petitioner needs child care assistance in the future based on other service needs such as employment or special health needs, she can apply for assistance.

ORDER

The Department's Motion to Dismiss is granted as the case is moot.

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